

TTAB

UNITED STATES PATENT AND TRADEMARK
OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: July 14, 2005

Oddo, Jr., Edward

1690 SW 6TH Ave.
Boca Raton, FL 33486

76/234,693
78/434,151

Cancellation No. 92044728
Reg. No. 2608236

Thomas H. Van Hoozer
HOVEY WILLIAMS LLP
2405 Grand Blvd.; Suite 400
Kansas City, MO 64108-2519

American Italian Pasta Company

V.

Oddo, Jr., Edward

Helen Johnson, Legal Assistant

A petition, a copy of which is attached, has been filed to cancel the above-identified registration.

Proceedings will be conducted in accordance with the Trademark Rules of Practice.

ANSWER IS DUE FORTY DAYS after the mailing date hereof.
(See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12,



07-27-2005

U.S. Patent & TMO/TM Mail Rcpt Dt. #77

2003). Notices concerning the rules changes, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), are available at www.uspto.gov/web/offices/dcom/ttab/.

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Discovery and testimony periods are set as follows:

Discovery period to open: **August 03, 2005**

Discovery period to close: **January 30, 2006**

30-day testimony period for party
in position of plaintiff to close: **April 30, 2006**

30-day testimony period for party
in position of defendant to close: **June 29, 2006**

15-day rebuttal testimony period
for plaintiff to close: **August 13, 2006**

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the

Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

ESTTA Tracking number: **ESTTA38484**

Filing date: **07/13/2005**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	American Italian Pasta Company		
Entity	Corporation	Citizenship	Delaware
Address	4100 North Mulberry Drive, Suite 200 Kansas City, MO 64116 UNITED STATES		

Attorney information	Thomas H. Van Hoozer HOVEY WILLIAMS, LLP 2405 Grand Blvd.Suite 400 Kansas City, MO 64108 UNITED STATES tvh@hoveywilliams.com Phone:8164749050
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Registration Subject to Cancellation

Registration No	2608236	Registration date	08/13/2002
Registrant	Oddo, Jr., Edward 1690 SW 6TH Ave. Boca Raton, FL 33486 UNITED STATES		
Goods/Services Subject to Cancellation	Class 042. First Use: 20010905, First Use In Commerce: 20010905 Goods/Services: Restaurant services		

Attachments	Petition p1.tif (1 page) Petition p2.tif (1 page) Petition p3.tif (1 page) Petition p4.tif (1 page)
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Signature	/s: Thomas H. Van Hoozer/
Name	Thomas H. Van Hoozer
Date	07/13/2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re: U.S. Registration No. 2,608,236
Registration Date: August 13, 2002
Mark: EDDIE SPAGHETTI
Goods: Restaurant Services in International Class 42

AMERICAN ITALIAN PASTA)
COMPANY)

Petitioner,)

v.)

EDWARD ODDO)

Respondent.)

Cancellation Proceeding No. _____

PETITION FOR CANCELLATION

Petitioner, American Italian Pasta Company (hereinafter "Petitioner"), a corporation duly organized under the laws of the State of Delaware and having its principal place of business at 4100 North Mulberry Drive, Suite 200, Kansas City, Missouri 64116, believes that it is being and will be damaged by U.S. Registration No. 2,608,236 for the mark EDDIE SPAGHETTI for restaurant services in International Class 41 and hereby petitions to cancel that registration. As grounds therefor, Petitioner alleges that:

1. Petitioner operates a business including the manufacture and sale of pasta.
2. Petitioner is the owner of applications for U.S. Trademark Registration Serial No. 78/434,151 for the mark EDDIE'S SPAGHETTI and design for pasta in International Class 30 asserting a date of first use and first use in commerce as set

forth in its application for registration at least as early as October 31, 1990, and Serial No. 78/596,440 for the mark EDDIES for pasta in International Class 30 asserting a date of first use as set forth in its application for registration at least as early as October 31, 1990.

3. In the course of examination of Petitioner's Application Serial No. 78/484,151, U.S. Service Mark Registration No. 2,608,236 for the mark EDDIE SPAGHETTI for restaurant services in International Class 42 was cited against Petitioner's EDDIE'S SPAGHETTI and design mark as being likely to cause confusion, and as a result, registration was initially refused.
4. The date of first use of the mark EDDIE SPAGHETTI as recited in Registration No. 2,608,236 is September 5, 2001, long after applicant's first use of its marks EDDIE'S SPAGHETTI and design and EDDIE'S as recited in the aforementioned applications for registration.
5. The listed owner of U.S. Trademark Registration No. 2,608,236 15,607 according to the United States Trademark Electronic Search System is Respondent Edward Oddo, and the records reflect no assignment information for this registration.
6. On information and belief, Respondent has abandoned the registered mark EDDIE SPAGHETTI.
7. In addition, and as further grounds for the relief sought by this Petition, Registrant's adoption and first use of the mark EDDIE SPAGHETTI for restaurant services is long subsequent to the use by Petitioner and its predecessors in interest to the marks EDDIE'S SPAGHETTI and design and EDDIE'S for pasta. Such use by Registrant has been without the permission, consent or

authorization of the Petitioner.

8. Use of the EDDIE'S SPAGHETTI mark for restaurant services is likely to cause confusion, mistake and deception among consumers as to the origin of Registrant's mark and services, and create an impression that Respondent or its services are those of Petitioner, or in some way sponsored by, licensed, or otherwise affiliated with and endorsed by Petitioner, or come from the same source as the products of Petitioner, which is contrary to fact.
7. Petitioner will be damaged by the continuance of Registration No. 2,,608,236 because such registration stands in derogation of the prior, established rights of Petitioner, gives a color of right to Respondent to which he is not entitled, and casts a cloud over Petitioner's rights in and to its EDDIE'S SPAGHETTI and design and EDDIE'S marks for pasta, and in that Petitioner's application to register the mark EDDIE'S SPAGHETTI has been refused registration on the basis of Registration No. 2,608,236. Respondent's Registration No. 2,608,236 will remain as a cloud on Petitioner's legal right to use and register its mark EDDIE'S SPAGHETTI and design and EDDIE'S for pasta unless Respondent's registration is cancelled as requested herein.

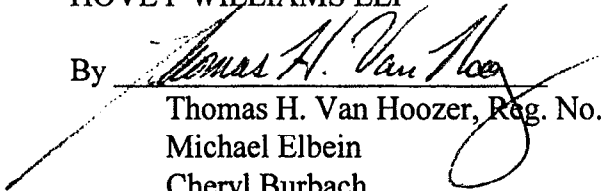
WHEREFORE, Petitioner prays that Registration No. 2,608,236 be cancelled, that this Petition for Cancellation be sustained in favor of Petitioner and that the continued registration of the mark EDDIE SPAGHETTI be denied to Respondent.

The Commissioner is hereby authorized to charge the fee of \$300 for filing this Petition for Cancellation to Deposit Account 19-0522. Any additional fees which may be required in connection with this Petition for Cancellation may be charged to Deposit Account 19-0522.

Respectfully submitted,

HOVEY WILLIAMS LLP

By


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ATTORNEYS FOR PETITIONER
AMERICAN ITALIAN PASTA COMPANY

(Docket No. 35054)

United States Patent and Trademark Office
Commissioner for Trademarks
P.O. Box 1451

Alexandria, VA 22313-1451

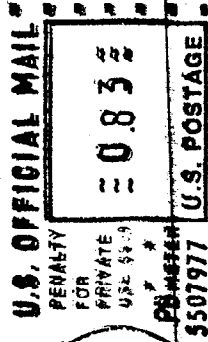
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☐ ATTEMPTED-NOT KNOWN
☐ UNCLAIMED ☐ REFUSED
☐ NO SUCH STREET/NUMBER
☐ BOX INACTIVE
☐ INSUFFICIENT ADDRESS
☐ VACANT ☐ DECEASED
DATE _____ ROUTE NO. _____ CARRIER/INITIALS _____



Not
this
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92044728

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